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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. —

FEDERAL POWER COMMISSION, PETITIONER

v.

METROPOLITAN EDISON COMPANY, NORTHERN PENNSYLVANIA POWER COMPANY, PENNSYLVANIA ELECTRIC COMPANY, ERIE LIGHTING COMPANY, THE CLARION RIVER POWER COMPANY, AND SOLAR ELECTRIC COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

The Solicitor General, on behalf of the Federal Power Commission, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Third Circuit entered in the above cause on January 27, 1938 (R. 62), restraining the Federal Power Commission from proceeding with a certain hearing in the course of an inquiry and investigation instituted by the Commission upon its own motion, unless the Commission restricts the issues and evidence to those specified by the court below.

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 50) has not yet been reported.

JURISDICTION

The decree of the Circuit Court of Appeals sought to be reviewed was entered on January 27, 1938. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The Federal Power Commission on January 26, 1937, entered an interim or procedural order in the course of an investigation, giving notice of hearing to determine its jurisdiction over certain companies whose status as affiliates of certain utilities was disputed. On respondents' request, a so-called rehearing of this order was granted. During the so-called rehearing, the Commission proferred evidence, received by the trial examiner, to which respondent objected as irrelevant to the jurisdictional issues raised in the request for rehearing. Respondents thereupon sought, and obtained, an injunction in the Circuit Court of Appeals enjoining the introduction of evidence by the Commission before the examiner except as limited in accordance with respondents' view of relevancy. The questions presented are:

1. Whether the order of January 26, 1937, is an appealable order under Section 313 of the Federal

Power Act, so that a Circuit Court of Appeals has authority under Section 262 of the Judicial Code to issue an injunction in aid of its appellate jurisdiction in respect of such order.

2. Whether a court may enjoin the proffer of evidence at a hearing before a trial examiner of an administrative agency, in the course of an investigation, on the ground that the evidence is not relevant to the issues to be determined at the hearing.

STATUTES INVOLVED

The relevant provisions of the Judicial Code and the Federal Power Act are printed in the Appendix, *infra,* pp. 22–26.

STATEMENT

The facts, as shown by the petition of respondents in the court below (R. 1–35) and the return of the Commission to the rule to show cause (R. 40–49), are as follows:

[redacted]

On January 6, 1936, more than a year prior to the order and hearing now complained of, the Federal Power Commission, on its own motion, entered an order of inquiry and investigation directed to the complainants below, hereinafter called respondents, to determine certain facts regarding (1) the ownership, operation, management, and control of respondents; (2) contracts and working arrangements in effect between respondents and individuals, firms, and corporations which are affiliated with respondents (R. 23). Respondents were required to file copies of all such contracts and a

full and complete statement of all such working arrangements; to submit complete statements of the charges appearing on their books for the years 1934 and 1935, representing payments made and obligations incurred with any affiliate and to make available for examination by the Commission's representative upon demand, all books, accounts, memoranda, records, and correspondence of the respondents and all affiliates in so far as they related to the transactions with or the business of the respondents. A copy of the order was served upon each respondent (R. 24). Authority for such investigation and order is conferred by Sections 301 (c), 307, and 311 of the Federal Power Act, *infra,* pp. 22–25.

Respondents, with certain unimportant exceptions, filed returns to the Commission's order as required. The books, accounts, memoranda, records, and correspondence of the respondents, and of certain affiliates, were made available to representatives of the Commission for examination. But the Commission's representatives were denied access to the books, accounts, memoranda, records, and correspondence of certain persons whom respondents claimed to be non-affiliates. The jurisdiction of the Commission and its right to have access to such books, records, accounts, memoranda, and correspondence as provided by Section 301 (c) of the Federal Power Act was brought directly into issue. The information which had been gathered by the representatives of the Commission was embodied

in a report to the Commission under date of December 10, 1936. (R. 42–45.)

On January 26, 1937, the Commission issued an order and notice that a hearing was to be held on March 3, 1937, to ascertain and determine all facts regarding (1) the ownership, operation, and management of respondents; (2) contracts and working arrangements between respondents and affiliates; and (3) expenditures made and obligations incurred under such contracts and working arrangements that in any way affected or related to the business of respondents (R. 25). Said order and notice of hearing, which was in the nature of a subpena duces tecum, also directed respondents and certain designated affiliates with whom respondents had business transactions during 1934 and 1935, as disclosed by books of respondents, to appear at the hearing and present for the record certain specified information disclosing: (1) the control exercised over the management of respondents and the control and management of designated affiliates; (2) contracts and working arrangements between respondents and such affiliates and all charges made and obligations incurred in relation thereto (R. 26). Thereafter, on February 23, 1937, respondents filed a "petition for rehearing" directed to the order of January 26, 1937, asserting that such order was a final "order" reviewable by a Circuit Court of Appeals under Section 313 (b) of the Federal Power Act, *infra,* p. 26, and that a petition for rehearing was there-

fore proper under that section. (R. 3, 13.) This petition, though labelled a "petition for rehearing," was filed before any hearing was had or could be had on the issues framed by the order of January 26, 1937, and was in substance a request "for the vacation of" that order for want of jurisdiction over the parties and subject matter.[1]

On February 24, 1937, the Commission continued without day the hearing set by its order and notice

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[1] The so-called petition for rehearing stated (R. 14): "This petition is made for a rehearing with respect to a certain order made herein by the Federal Power Commission (hereinafter referred to as the 'Commission'), on January 26, 1937, and for the vacation of said order on the following grounds:

(1) that said order was made in pursuance and as part of an investigation heretofore instituted by the Commission and now being prosecuted by it, relating to solely local and intrastate matters, and instituted and prosecuted for the sole purpose of supplying information to the Public Service Commission of the Commonwealth of Pennsylvania (hereinafter sometimes referred to as the 'Pennsylvania Commission'), to assist the Pennsylvania Commission in the prosecution of certain proceedings instituted and now being prosecuted by it, relating to solely local and intrastate matters, and having for their object the enforcement of Pennsylvania statutes, and rules of the Pennsylvania Commission, and the imposition of penalties prescribed by the laws of the Commonwealth of Pennsylvania;

(2) that the Commission is without jurisdiction of the petitioners herein in the premises;

(3) that the Commission is without jurisdiction of the subject matter of said investigation;

(4) that said investigation and said order invade the rights of petitioners guaranteed to them by the Constitution of the United States;

of hearing of January 26, 1937 (R. 29). On March 23, 1937, the Commission issued a notice to respondents granting the petition for rehearing and assigning the issues raised in the proceeding for hearing at a later date (R. 47, 49). On April 14, 1937, the hearing was begun before an examiner of the Federal Power Commission. Respondents introduced evidence tending to show that the Erie Lighting Company, the Clarion River Power Company, and the Solar Electric Company, three of the respondents, operated wholly within the State of Pennsylvania and were intrastate in character. The respondents also introduced evidence to support their contention that the purpose of the inquiry was to obtain information for the use of the Pennsylvania Public Service Commission in connection with an investigation which it had instituted and which was then in progress. (R. 6.)[2]

After respondents had concluded the introduction of such evidence as they proposed to offer, the attorneys for the Federal Power Commission began the introduction of evidence relating to the jurisdiction of the Commission to issue the order of

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(5) that said order is not authorized by the Federal Power Act;

(6) that if said investigation and said order are authorized by the Federal Power Act, then said Act is in violation of the Constitution of the United States; all as more fully hereinafter set forth"

[2] A transcript of the proceedings before the examiner was filed in the court below, and has been certified by the clerk of that court and filed herewith in this Court.

January 26, 1937, under Section 301 (c) of the Act. That section authorizes the Commission to require the production of books, records, etc., of companies affiliated, under common control, with a licensee or utility subject to the jurisdiction of the Commission, in so far as the records relate to the business of such licensee or utility. The evidence proffered and intended to be proffered was designed to show that charges reflected on the books of respondents originated with alleged non-affiliates and that the latter were in fact under common control with respondents. Respondents objected to the introduction of such evidence on the ground that it was not relevant to the jurisdictional issues made by their "petition for rehearing" and by the evidence introduced by them. These objections were overruled by the trial examiner. (R. 30–34, 47–48.)

Thereupon, on April 21, 1937, one week after the commencement of the hearing, respondents filed a petition in the United States Circuit Court of Appeals for the Third Circuit praying for a rule to show cause and for a stay of proceedings before the Federal Power Commission (R. 1). The respondents insisted that the Commission be required to limit the pending hearing solely to the jurisdictional questions upon which the respondents had introduced evidence. The Circuit Court of Appeals on July 6, 1937, issued the rule as prayed (R. 36). The Commission, having made a return to the rule on September 21, 1937, prayed that the rule be dis-

charged, the stay of the proceedings terminated, and the petition dismissed (R. 40–49).

On January 27, 1938, the Court of Appeals, one judge dissenting, rendered its decision (R. 50) restraining the Commission from proceeding with its proposed inquiry and investigation until the two issues raised in the petition for rehearing have been decided by the Commission. By way of direction to the Commission, the majority opinion states: "The relation of the evidence to the two questions involved should be apparent and logical and not far-fetched and remotely inferential. Some of the evidence admitted when the case was before the Federal Commission on rehearing was not relevant and material." The cause was ordered "remanded" to the Commission, although the case had not come to the Court of Appeals on appeal. In fact, no statutory or judicial authority establishing jurisdiction in the Court of Appeals was cited in the majority opinion or in the respondents' petition in that court. The dissenting opinion of Judge Biggs states that Section 262 of the Judicial Code, commonly known as the "all writs" section, was invoked. After a review of pertinent decisions, not adverted to in the majority opinion, Judge Biggs concluded that the order of January 26, 1937, was not an appealable order; that hence there was at this time no appellate jurisdiction to protect under Section 262; that the court therefore was without power to issue an injunction;

and that the result of the decision, sanctioning judicial intervention in administrative hearings, would be to "emasculate the Federal Power Act and render the Commission unable to pass upon the very matters for which it was created." (R. 54–62.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that an interim or procedural order, interlocutory in its nature, is a reviewable order under the provisions of Section 313 of the Federal Power Act.

2. In holding that Section 262 of the Judicial Code conferred authority on the court to grant the relief played for.

3. In supervising the proffer of evidence in the course of an administrative hearing before the Federal Power Commission and in limiting the issues upon which evidence might be received.

4. In not holding that respondents had a plain, adequate, and complete remedy at law, and that their administrative remedies had not been exhausted.

5. In failing to dismiss respondents' petition.

REASONS FOR GRANTING THE WRIT

The decision below marks an unprecedented departure from the principles governing orderly review of administrative action. Unless the decision is reversed, it will tend to unsettle the law in this

regard not only in relation to the Federal Power Commission but in relation to most of the other Federal administrative agencies as well.

1. In holding that the order of January 26, 1937, is an appealable order, the decision below fails to follow the applicable decisions of this Court and is in conflict with numerous decisions of the Circuit Courts of Appeals.

While the proceeding below was not an appeal from the order of January 26, 1937, the appealability of that order became the basic question to be decided in order to determine whether there was jurisdiction under the "all writs" section of the Judicial Code (section 262) to entertain the proceeding. The order was in two parts. (R. 26.) Paragraph (a) gave notice to 39 persons, firms, and corporations, including the six respondents herein, that a hearing would be held to determine the status of certain companies which had claimed to be nonaffiliates of respondents but which the Commission had reason to believe, from its field examination, were in fact affiliates having transactions with respondents and so subject to the investigatory powers of the Commission. Paragraph (b) of the order was in substance a subpena duces tecum requiring the attendance on March 3, 1937, of the 39 persons, firms, and corporations, with certain records and documents. This order was plainly an interim or procedural order of the character that this Court has repeatedly held nonappealable under statutory provisions containing

language similar to that of the Federal Power Act. The Act, in providing for an appeal from "any order" of the Commission, makes it clear that orders which are merely procedural, entered properly without prior hearing, based on no record, and embodying no judgment cannot be reviewed on appeal to a Circuit Court of Appeals. The Act provides, in section 313, prescribing the requirements for appeal, that the Commission must certify and file with the court a "transcript of the record" upon which the order complained of was entered; that the "findings" of the Commission as to the facts, if supported by substantial evidence, shall be conclusive; that "additional" evidence may be adduced upon leave of court if there were reasonable grounds for failure to adduce such evidence before the Commission. These provisions of the statute must be ignored if mere interim, procedural or interlocutory orders of the sort here involved, setting down for hearing a question of jurisdiction in the course of an investigation, can be reviewed on direct appeal to a Circuit Court of Appeals.

The applicable rule was announced by this Court in *United States* v. *Illinois Central R. Co.*, 244 U. S. 82. There it was argued that an order of the Interstate Commerce Commission assigning for hearing certain complaints filed with it was reviewable under the provision of the Urgent Deficiencies Act of 1913, conferring on the district courts jurisdiction to enjoin, set aside, annul or

suspend "any order" of the Commission. It was argued that the Commission lacked jurisdiction to hold the hearing; that the company would be subjected thereby to needless burden and expense; and that an order of reparation entered at the conclusion of the hearing would constitute *prima facie* evidence in suits brought against the carrier on the basis of the awards. Despite these contentions this Court held the order not reviewable. See also *United States* v. *Los Angeles R. R.*, 273 U. S. 299, holding that an order determining the final valuation of railroad property is not reviewable. The *Illinois Central* case was applied in *New York, O. & W. Ry. Co.* v. *United States*, 14 F. (2d) 850 (S. D. N. Y.) (Rogers, Hough and Bondy, JJ.) to preclude review of an order of the Commission reopening a valuation proceeding in respect of items never objected to by the carrier, the carrier having protested in respect of only a few items. Despite the question raised as to the authority of the Commission, and the allegations of burden and expense to the railroad, the court held that review did not extend to orders "relating to practice or procedure" (p. 851). The decision was affirmed *per curiam*, 273 U. S. 652.

The fact that paragraph (b) of the order in question was in the nature of a subpena duces tecum does not affect the case. In the first place, the issuance of such a subpena does not involve the requisites of prior notice, hearing, evidence, and findings by the Commission which section 313 (b)

of the Act contemplates in providing for appeal from orders of the Commission. See *Securities & Exchange Commission* v. *Andrews,* 88 F. (2d) 441, 442 (C. C. A. 2nd). In the second place, the Commission has no power to enforce its subpenas except by a proceeding in a district court for that purpose; hence it is not to be supposed that if questions as to the validity of the subpena were raised, a party could anticipate the possible enforcement of the subpena and "appeal" to a Circuit Court of Appeals from its mere issuance. While it is true that penalties attach for disregard of a subpena, these can be stayed on application to the Commission, and such application is required to exhaust administrative remedies. *Natural Gas Pipeline Co.* v. *Slattery,* 302 U. S. 300, 309–310. And finally, the subpena is out of the case in any event, and has been so since the hearing before the Commission. The subpena required attendance on March 3, 1937; respondents' petition for "rehearing" was filed with the Commission February 23, 1937, and on February 24, 1937, the hearing set for March 3 was continued without day (R. 29), so that the subpena was permitted to lapse. To avoid doubt on that score the Commission stipulated in the court below that the subpena had expired and that no effort would be made to enforce it (R. 35). For all these reasons, then, the order of January 26, 1937, so far as appealability is concerned, is no more than a notice of hearing.

Other comparable preliminary orders of administrative agencies have repeatedly been held non-appealable. Thus, in *Jones* v. *Securities & Exchange Commission,* 79 F. (2d) 617 (C. C. A. 2nd), the court dismissed for want of jurisdiction an appeal from an order denying permission to withdraw a registration statement, though the statute granted a right of review to "any person aggrieved by an order of the Commission." This Court denied certiorari, 297 U. S. 705, on the same day that it granted certiorari in a companion case arising on an order of the District Court requiring obedience to a subpoena. 297 U. S. 699 (reversed on the merits, 298 U. S. 1). And in *Chamber of Commerce* v. *Federal Trade Commission,* 280 Fed. 45 (C. C. A. 8th), where the Circuit Court of Appeals was asked to set aside an order of the Federal Trade Commission denying motions to dismiss a complaint set down for hearing before the Commission, the court said (p. 48):

> It is our judgment that neither the District Court nor this court has power under the act to interfere with the investigation and inquiry of the Commission, involving the taking of testimony and the finding of facts essential to the making of such an order as shall ultimately be passed upon by the Circuit Court of Appeals for enforcement, affirmance, modification, or setting aside.

And see *Ames Baldwin Wyoming Co.* v. *National Labor Relations Board,* 73 F. (2d) 489 (C. C. A. 4th).

This uniform course of decisions respecting administrative orders conforms closely to the principles governing review of judicial proceedings. It is well settled that except in classes of cases where specific statutory exception is made, an appellate court will not review interlocutory rulings made during the course of proceedings in an inferior court. *McLish* v. *Roff*, 141 U. S. 661. The reasons for this rule in the case of judicial proceedings were stated in *American Construction Co.* v. *Jacksonville T. & K. W. Ry. Co.*, 148 U. S. 372, 379, quoting Chief Justice Marshall. To review by mandamus a ruling or interlocutory order made in the course of a trial would, the Court said:

> * * * "be a plain evasion of the provision of the act of Congress that final judgments only should be brought before this court for re-examination;" would "introduce the supervising power of this court into a cause while pending in an inferior court, and prematurely to decide it;" would allow an appeal or writ of error upon the same question to be "repeated, to the great oppression of the parties;" and "would subvert our whole system of jurisprudence." *Bank of Columbia* v. *Sweeny*, 1 Pet. 567, 569; *Life & Fire Ins. Co.* v. *Adams*, 9 Pet. 573, 602.

It is noteworthy that in holding the order of January 26, 1937, to be an appealable order, the opinion

of the court below not only fails to consider any of the decisions discussed above, but cites no authority; and, it is submitted, none exists.[3]

2. What has been said indicates that, as there was no appealable order, statutory jurisdiction in the court below to grant injunctive relief under section 262 of the Judicial Code was wholly lacking. But apart from this conclusion, the granting of an injunction to control the reception of evidence in an administrative hearing violates established canons of judicial administration. Those canons have been restated by this Court in *Myers* v. *Bethlehem Shipbuilding Corp.*, No. 181, decided January 31, 1938, shortly after the decision below was rendered. As was there observed, attempts to enjoin administrative hearings on the ground of want of jurisdiction, needless burden and expense, and injury to credit and good will, have repeatedly been rejected. *Federal Trade Commission* v. *Claire*

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[3] In the court below respondents relied on *American Sumatra Tobacco Co.* v. *Securities & Exchange Commission*, 93 F. (2d) 236 (App. D. C.). That case held that an order of the Securities and Exchange Commission denying an application for confidential treatment of certain data in a registration statement was appealable. As a basis for its decision that court ruled that a hearing was necessary to support such an order, and that hence the statutory requisites for appealability were present. Without conceding the correctness of that decision, it is manifestly inconsistent with respondent's contention in the present case, for here confessedly no prior hearing was required to support the order of January 26, 1937.

Furnace Co., 274 U. S. 160; *Bradley Lumber Co.* v. *National Labor Relations Board*, 84 F. (2d) 97 (C. C. A. 5th); *Macfadden Publications* v. *Federal Trade Commission*, 37 F. (2d) 822 (App. D. C.); *Minneapolis Chamber of Commerce* v. *Federal Trade Commission*, 280 Fed. 45 (C. C. A. 8th). In the last cited case the court declared (p. 47):

> It was not intended that the Circuit Courts of Appeals should be drawn into original conduct of these investigations. If this court is to exercise plenary power and control in determining at the outset what party shall be dealt with, what investigation shall be made, and what recommendation submitted, then it has, in effect, been constituted an original trial tribunal of controversies of this nature. This was in no wise contemplated, nor would it comport with the legitimate practical functions of a court of this nature.

In the present case the grounds urged for injunctive relief are even less plausible than in the cases cited above. Here the respondents seek to restrain a hearing not on the ground that the Commission lacks authority to conduct it, nor on the ground that testimony is being illegally compelled, but on the ground that evidence is being adduced before a trial examiner which, it is contended, is irrelevant to the issues on the so-called rehearing sought by respondents. Taking respondents' contentions in their most favorable light, it is difficult to discover

any basis for a claim of injury. While, as suggested in argument below, the reception of evidence found to be irrelevant may somewhat prolong the hearing, recourse to a Circuit Court of Appeals to correct the assumed error is a dilatory practice hardly to be justified on the basis of expedition, as the course of the present case sufficiently demonstrates. The reception of evidence deemed irrelevant is one of the lesser delays ordinarily incident to litigation.[4]

The rule requiring exhaustion of administrative remedies is peculiarly applicable here, for relief by injunction is sought even before the objections to the admission of evidence have been reviewed by the Commission itself. As Judge Biggs observed in his dissenting opinion, "For this court to pass upon such questions during the pendency of a hearing before the Commission is to compel us in effect to sit with the Commission throughout every phase of its inquiry." And since the judicial power exercised by courts established under Article III of the Constitution does not extend to the supervision of quasi-legislative proceedings, intervention in this

[4] Compare: "Upon the Board's petition under § 10 (e) to enforce the order, heard April 1, 1936, the Court of Appeals for the Third Circuit gave judgment after a delay of one year and two months, during which there were three postponements and two reargruments." *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, No. 413, decided February 28, 1938, p. 2.

manner at this stage raises also a question of constitutional authority. Cf. *Federal Radio Commission* v. *General Electric Co.*, 281 U. S. 464, and cases cited.

3. The decision and decree below jeopardize the progress of an important investigation undertaken by the Commission. The Commission is ordered to proceed with the rehearing and to present only such evidence as is "relevant" to the issues raised by the respondents' evidence. The test of admissibility is that the relevance must be "apparent and logical and not far-fetched and remotely inferential." "Some of the evidence" introduced did not, in the view of the court, meet this criterion. Thus the Commission is forced to apply a vague test of relevancy laid down in advance, presumably on pain of contempt should it err in the reception of evidence. Furthermore, the decree enjoins the investigation, until the "rehearing" is completed, not only under the order of January 26, 1937, but also under the order of January 6, 1936, which set in motion the entire investigation. (R. 62.) On no conceivable hypothesis could the court assume to protect its appellate jurisdiction in respect of this earlier order, as the time to appeal therefrom, if the order be thought appealable, had expired by more than a year when the jurisdiction of the court below was invoked.

4. The decision below, unless reversed, will constitute a precedent of general importance. Hith-

erto the Federal administrative agencies have been held to be free from intervention in the progress of their proceedings. This has been true of the Interstate Commerce Commission (*United States* v. *Illinois Central R. R. Co.*, 244 U. S. 82), the Federal Trade Commission (*Federal Trade Commission* v. *Claire Furnace Co.*, 274 U. S. 160), the Securities and Exchange Commission (*Jones* v. *Securities and Exchange Commission*, 79 F. (2d) 617 (C. C. A. 2d), certiorari denied, 297 U. S. 705), the Federal Communications Commission (*Sykes* v. *Jenny Wren Co.*, 78 F. (2d) 729 (App., D. C.), certiorari denied, 296 U. S. 624), and the National Labor Relations Board (*Myers et al.* v. *Bethlehem Shipbuilding Corp., Ltd.*, Nos. 181, 182, decided January 31, 1938). No reason appears for adopting a contrary position with respect to the Federal Power Commission. The gravity of the decision lies in its unsettling effect on the principles governing review of administrative action, and particularly in the possibility that each successive step in an administrative proceeding or quasi-legislative investigation may be made the subject of separate review in the courts. Such an innovation would be subversive of orderly judicial administration.

CONCLUSION

In view of the nature of the case, it is requested that certiorari be granted and the case set down for argument at this Term; or, in the alternative, that

certiorari be granted and the decree below be reversed forthwith with directions that the petition of respondents in the court below be dismissed.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

OSWALD RYAN,
General Counsel,
Federal Power Commission.

APRIL 1938.

APPENDIX

Judicial Code, Section 262 (U. S. C., Title 28, Sec. 377):

> The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law. (R. S. Sec. 716; March 3, 1911, c. 231, Sec. 262, 36 Stat. 1162.)

Federal Power Act, c. 687, 49 Stat. 803 (U. S. C. Sup. II, Title 16, Sec. 825):

> SEC. 301. (c) The books, accounts, memoranda, and records of any person who controls, directly or indirectly, a licensee or public utility subject to the jurisdiction of the Commission, and of any other company controlled by such person, in so far as they relate to transactions with or the business of such licensee or public utility, shall be subject to examination on the order of the Commission.
>
> * * * * *
>
> SEC. 307. (a) The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person has violated or is about to violate any provision of this Act or any rule, regulation, or order thereunder, or to aid in the enforce-

ment of the provisions of this Act or in prescribing rules or regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this Act relates. The Commission may permit any person to file with it a statement in writing under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish or make available to State commissions information concerning any such subject.

(b) For the purpose of any investigation or any other proceeding under this Act, any member of the Commission, or any officer designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission finds relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States at any designated place of hearing. Witnesses summoned by the Commission to appear before it shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(c) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspond-

ence, memoranda, contracts, agreements, and other records. Such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found or may be doing business. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

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SEC. 311. In order to secure information necessary or appropriate as a basis for recommending legislation, the Commission is authorized and directed to conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions, whether or not otherwise subject to the jurisdiction of the Commission, including the generation, transmission, distribution, and sale of electric energy by any agency, authority, or instrumentality of the United States, or of any State or municipality or other political subdivision of a State. It shall, so far as prac-

ticable, secure and keep current information regarding the ownership, operation, management, and control of all facilities for such generation, transmission, distribution, and sale; the capacity and output thereof and the relationship between the two; the cost of generation, transmission, and distribution; the rates, charges, and contracts in respect of the sale of electric energy and its service to residential, rural, commercial, and industrial consumers and other purchasers by private and public agencies; and the relation of any or all such facts to the development of navigation, industry, commerce, and the national defense. The Commission shall report to Congress the results of investigations made under authority of this section.

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SEC. 313. (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this Act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.

(b) Any party to a proceeding under this Act aggrieved by an order issued

by the Commission in such proceeding may obtain a review of such order in the Circuit Court of Appeals of the United States for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions

as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

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